

**ENTERED**

August 04, 2021

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

LEONARD T. TEAL,  
TDCJ #1508728,

Petitioner,

V.

BOBBY LUMPKIN, Director,  
Texas Department of Criminal  
Justice - Correctional  
Institutions Division,

Respondent .

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 104

CIVIL ACTION NO. H-21-1945

MEMORANDUM OPINION AND ORDER

Leonard T. Teal (TDCJ #1508728) has filed a Petition For a Writ of Habeas Corpus By a Person in State Custody ("Petition") (Docket Entry No. 1), seeking relief from a judgment of conviction that was entered against him in 2008. Teal has also filed a Petition for Leave to File Petition for Writ of Habeas Corpus: 28 U.S.C. § 2254, which is construed as a supporting memorandum of law ("Memorandum") (Docket Entry No. 2), a Petition Requesting Suspension of Rules requiring him to provide copies of his pleadings to the respondent (Docket Entry No. 3), and a Petition Requesting an Evidentiary Hearing (Docket Entry No. 4). After considering all of the pleadings and the applicable law pursuant to Rule 4 of the Rules Governing Section 2254 Proceedings in the United States District Courts, this case will be dismissed for the reasons explained below.

## I. Background

On May 14, 2008, Teal was convicted by a jury in the 179th District Court of Harris County, Texas, and sentenced to forty years' imprisonment in Cause No. 1091458.<sup>1</sup> Court records reflect that Teal was convicted of aggravated robbery in two cases (Cause Nos. 1091458 and 1091459), which were tried separately and affirmed during a consolidated appeal. See Teal v. State, Nos. 14-08-00434-CR, 14-08-00546-CR, 2009 WL 2933723 (Tex. App. – Houston [14th Dist.] Sept. 15, 2009, pet. ref'd). The Texas Court of Criminal Appeals refused Teal's petition for discretionary review on February 24, 2010.

In a federal habeas Petition that is dated June 9, 2021,<sup>2</sup> Teal contends that he is entitled to relief from his conviction in Cause No. 1091458 for the following reasons:

1. He was denied effective assistance of counsel during the plea bargain process when his attorney failed to consult with a fingerprint expert before his first trial.
2. His defense counsel was ineffective for failing to conduct an adequate pretrial investigation regarding the fingerprint evidence against him.

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<sup>1</sup>Petition, Docket Entry No. 1, p. 2. For purposes of identification all page numbers reference the pagination imprinted on each docket entry by the court's Electronic Case Filing ("ECF") system.

<sup>2</sup>Teal signed the Petition on June 9, 2021, indicating that he placed his pleadings in the prison mail system for delivery to the court on that same day. See Petition, Docket Entry No. 1, p. 11. His pro se submissions are treated as filed on the date he placed them in the prison mail system under the prison mailbox rule, which also applies to post-conviction proceedings in Texas. See Richards v. Thaler, 710 F.3d 573, 578-79 (5th Cir. 2013).

3. The judgment is "null and void" because the visiting judge who presided over his trial failed to take the "Oath of Office" before the start of the proceeding.<sup>3</sup>

Teal reports that these claims were denied or dismissed without a written order by the Texas Court of Criminal Appeals in two separate state habeas corpus proceedings that he filed under Article 11.07 of the Texas Code of Criminal Procedure.<sup>4</sup>

## II. Discussion

### A. The One-Year Statute of Limitations

The Petition is governed by the Antiterrorism and Effective Death Penalty Act (the "AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (1996), which established a one-year statute of limitations on federal habeas review. The applicable limitations period, which is found in 28 U.S.C. § 2244(d), provides as follows:

- (d) (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

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<sup>3</sup>Petition, Docket Entry No. 1, pp. 7-8.

at 4-5.

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1). Teal has submitted his claims for relief on a standard form Petition that sets out the AEDPA statute of limitations in full, affording him notice and an opportunity to explain why the Petition is not time-barred.<sup>5</sup> See Day v. McDonough, 126 S. Ct. 1675, 1684 (2006) (noting that a court must assure that the parties have "fair notice and an opportunity to present their positions" before dismissing a pro se petition as barred by limitations).

Because Teal challenges a state court judgment, the one-year statute of limitations found in 28 U.S.C. § 2244(d)(1)(A) began to run when his time to seek direct review expired. As noted above, the Texas Court of Criminal Appeals denied his petition for discretionary review on February 24, 2010. Although Teal did not appeal further by filing a petition for a writ of certiorari with the United States Supreme Court, his time to do so expired ninety days later on May 25, 2010. See SUP. CT. R. 13.1. That date triggered the statute of limitations found in 28 U.S.C.

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<sup>5</sup>See at 10.

§ 2244(d)(1)(A), which expired one year later on May 25, 2011. The pending federal Petition, which was filed on June 9, 2021, is over ten years late and is therefore time-barred unless a statutory or equitable exception applies.

**B. Teal is Not Entitled to Statutory Tolling**

A federal habeas petitioner may be entitled to tolling under 28 U.S.C. § 2244(d)(2), which provides that the time during which a "properly filed" application for state habeas corpus or other collateral review is pending shall not be counted toward the limitations period. Teal reports that he filed an initial state habeas corpus application on September 19, 2018, which the Texas Court of Criminal Appeals denied without written order on September 18, 2019.<sup>6</sup> Teal filed a second state habeas corpus application on May 13, 2020, which the Texas Court of Criminal Appeals dismissed without written order on April 21, 2021.<sup>7</sup> Because these state habeas proceedings were filed well after the limitations period had already expired, they have no tolling effect for purposes of § 2244(d)(2). See Scott v. Johnson, 227 F.3d 260, 263 (5th Cir. 2000) (noting that the statute of limitations is not tolled by a state habeas corpus application filed after the expiration of the limitations period).

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<sup>6</sup>See at 4.

The pleadings do not disclose any other basis for statutory tolling. Teal does not allege facts showing that state action prevented him from filing a timely federal petition. See 28 U.S.C. § 2244(d)(1)(B). None of his claims are based on a constitutional right that has been newly recognized by the Supreme Court. See 28 U.S.C. § 2244(d)(1)(C). Likewise, he does not demonstrate that his allegations are based on a "new factual predicate" that could not have been discovered previously if he had acted with due diligence. See 28 U.S.C. § 2244(d)(1)(D). As a result, statutory tolling will not save Teal's untimely Petition.

#### C. Equitable Tolling Is Not Available

The statute of limitations may be tolled for equitable reasons, but the Supreme Court has emphasized that a habeas petitioner is entitled to equitable tolling "only if he shows '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing." Holland v. Florida, 130 S. Ct. 2549, 2562 (2010) (quoting Pace v. DiGuglielmo, 125 S. Ct. 1807, 1814 (2005)). The chronology in this case reflects extensive delay, and Teal offers no explanation for his failure to pursue habeas review with the requisite diligence. The Fifth Circuit has repeatedly held that "[E]quity is not intended for those who sleep on their rights." Manning v. Epps, 688 F.3d 177, 183 (5th Cir. 2012) (internal quotation marks and citations omitted).

Teal argues that he is entitled to equitable tolling because the judgment in his case was "null and void" -- reasoning that he is therefore actually innocent.<sup>8</sup> If proven, actual innocence may excuse a failure to comply with the one-year statute of limitations on federal habeas corpus review. McQuiggin v. Perkins, 133 S. Ct. 1924, 1928 (2013). To be credible a habeas petitioner must support a claim of actual innocence with "new reliable evidence whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence -- that was not presented at trial." Schlup v. Delo, 115 S. Ct. 851, 865 (1995). To prevail on such a claim a petitioner must show "that it is more likely than not that no reasonable juror would have convicted him in [] light of the new evidence." Id. at 867. Teal does not demonstrate that he is actually innocent under this standard.<sup>9</sup>

Absent a showing that he is actually innocent, Teal is not entitled to tolling under McQuiggin. Because the pleadings do not otherwise disclose a valid basis for tolling the statute of

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<sup>8</sup>See id. at 10.

<sup>9</sup>Teal's underlying claim that his conviction is void, which is based on an assertion that the visiting judge who presided at his trial had not taken the oath of office required by Texas law, is one that has been repeatedly rejected as not cognizable under 28 U.S.C. § 2254. See Pierce v. Director, TDCJ-CID, Civil Action No. 4:06cv258, 20 WL 1796137, at \*17 (E.D. Tex. April 26, 2013) (citations omitted); Turner v. Quarterman, No. A-08-811-SS, 2009 WL 2406203, at \*8 (W.D. Tex. Aug. 3, 2009); Ramos v. Dretke, No. Civ. A. 4:04CV459-A, 2005 WL 39144, at \*3 (N.D. Tex. Jan. 6, 2005), rec. adopted, 2005 WL 233952 (N.D. Tex. Jan. 31, 2005).

limitations, the court concludes that this action must be dismissed as untimely filed.

### III. Certificate of Appealability

Rule 11 of the Rules Governing Section 2254 Cases requires a district court to issue or deny a certificate of appealability when entering a final order that is adverse to the petitioner. A certificate of appealability will not issue unless the petitioner makes "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), which requires a petitioner to demonstrate "that 'reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.'" Tennard v. Dretke, 124 S. Ct. 2562, 2565 (2004) (quoting Slack v. McDaniel, 120 S. Ct. 1595, 1604 (2000)). Where denial of relief is based on procedural grounds, the petitioner must show not only that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right," but also that they "would find it debatable whether the district court was correct in its procedural ruling." Slack, 120 S. Ct. at 1604. Because jurists of reason would not debate whether the Petition was properly dismissed, a certificate of appealability will not issue in this case.

### IV. Conclusion and Order

Accordingly, the court **ORDERS** as follows:

1. The Petition for a Writ of Habeas Corpus By a Person in State Custody (Docket Entry No. 1) filed by Leonard T. Teal is **DISMISSED WITH PREJUDICE**.

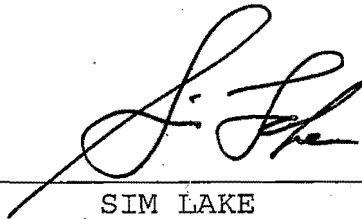


2. All of the petitioner's pending motions, including his Petition Requesting Suspension of Rules (Docket Entry No. 3) and his Petition Requesting an Evidentiary Hearing (Docket Entry No. 4), are **DENIED**.

3. A certificate of appealability is **DENIED**.

The Clerk shall provide a copy of this Memorandum Opinion and Order to the petitioner.

**SIGNED** at Houston, Texas, on this the 3rd day of August, 2021.

A handwritten signature in black ink, appearing to read 'S. Lake', is written over a horizontal line.

SIM LAKE  
SENIOR UNITED STATES DISTRICT JUDGE